

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MARLON BAYNES,

Plaintiff,

ANSWER TO COMPLAINT

-against-

JURY TRIAL DEMANDED

THE CITY OF NEW YORK and P.O.s JOHN and
JANE DOE #1-10, individually and in their official
capacities, (the names John and Jane Doe being
fictitious, as the true names are presently unknown,

07 CV 11185 (LTS)

Defendants.

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Defendant the City of New York by its attorney, Michael A. Cardozo,
Corporation Counsel of the City of New York, for its answer to the complaint, respectfully
alleges, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the complaint, except admit
that the plaintiff purports to bring this action as stated therein.
2. Deny the allegations set forth in paragraph "2" of the complaint, except admit
that the plaintiff purports to bring this action as stated therein.
3. Deny the allegations set forth in paragraph "3" of the complaint, except admit
that the plaintiff purports to invoke this Court's jurisdiction as stated therein.
4. Deny the allegations set forth in paragraph "4" of the complaint, except admit
that the plaintiff purports that venue is proper as stated therein.
5. Deny the allegations set forth in paragraph "5" of the complaint, except admit
that the plaintiff purports to demand a trial by jury of all issues in this matter as stated therein.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “6” of the complaint.

7. Deny the allegations contained in paragraph “7” of the complaint, except admit that the City of New York is a municipal corporation organized and existing under the laws of the State of New York.

8. Deny the allegations contained in paragraph “8” of the complaint, except admit that the City of New York is a municipal corporation organized and existing under the laws of the State of New York, that the City of New York maintains a police department.

9. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “9” of the complaint.

10. The allegations contained in paragraph “10” of the complaint constitute conclusions of law rather than averments of fact, and, accordingly, no response is required.

11. The allegations contained in paragraph “11” of the complaint constitute conclusions of law rather than averments of fact, and, accordingly, no response is required.

12. The allegations contained in paragraph “12” of the complaint constitute conclusions of law rather than averments of fact, and, accordingly, no response is required.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “13” of the complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “14” of the complaint.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “15” of the complaint.

16. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “16” of the complaint.

17. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “17” of the complaint.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “18” of the complaint.

19. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “19” of the complaint.

20. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “20” of the complaint.

21. Deny the allegations set forth in paragraph “21” of the complaint.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “22” of the complaint.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “23” of the complaint.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “24” of the complaint.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “25” of the complaint.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “26” of the complaint.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “27” of the complaint.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “28” of the complaint.

29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “29” of the complaint.

30. Deny the allegations set forth in paragraph “30” of the complaint.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “31” of the complaint.

32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “32” of the complaint.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “33” of the complaint.

34. In response to the allegations set forth in paragraph “34” of the complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

35. The allegations contained in paragraph “35” of the complaint constitute conclusions of law rather than averments of fact, and, accordingly, no response is required.

36. Deny the allegations set forth in paragraph “36” of the complaint.

37. Deny the allegations set forth in paragraph “37” of the complaint.

38. Deny the allegations set forth in paragraph “38” of the complaint.

39. Deny the allegations set forth in paragraph “39” of the complaint.

40. In response to the allegations set forth in paragraph “40” of the complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

41. Deny the allegations set forth in paragraph “41” of the complaint.

42. Deny the allegations set forth in paragraph “42” of the complaint.

43. In response to the allegations set forth in paragraph “43” of the complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

44. Deny the allegations set forth in paragraph “44” of the complaint.

45. Deny the allegations set forth in paragraph “45” of the complaint.

46. Deny the allegations set forth in paragraph “46” of the complaint.

47. In response to the allegations set forth in paragraph “47” of the complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

48. Deny the allegations set forth in paragraph “48” of the complaint.

49. Deny the allegations set forth in paragraph “49” of the complaint.

50. Deny the allegations set forth in paragraph “50” of the complaint.

51. In response to the allegations set forth in paragraph “51” of the complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

52. Deny the allegations set forth in paragraph “52” of the complaint.

53. Deny the allegations set forth in paragraph “53” of the complaint.

54. Deny the allegations set forth in paragraph “54” of the complaint.

55. In response to the allegations set forth in paragraph “55” of the complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

56. Deny the allegations set forth in paragraph “56” of the complaint.

57. Deny the allegations set forth in paragraph “57” of the complaint.

58. In response to the allegations set forth in paragraph “58” of the complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

59. Deny the allegations set forth in paragraph “59” of the complaint.

60. Deny the allegations set forth in paragraph “60” of the complaint.

61. Deny the allegations set forth in paragraph “61” of the complaint.

62. Deny the allegations set forth in paragraph “62” of the complaint.

63. Deny the allegations set forth in paragraph “63” of the complaint.

64. Deny the allegations set forth in paragraph “64” of the complaint.

65. Deny the allegations set forth in paragraph “65” of the complaint.

66. Deny the allegations set forth in paragraph “66” of the complaint.

67. Deny the allegations set forth in paragraph “67” of the complaint.

68. Deny the allegations set forth in paragraph “68” of the complaint.

69. Deny the allegations set forth in paragraph “69” of the complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations concerning the outcome of the plaintiff’s criminal case contained in paragraph “69” of the complaint.

70. In response to the allegations set forth in paragraph “70” of the complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

71. Deny the allegations set forth in paragraph “71” of the complaint.

72. Deny the allegations set forth in paragraph “72” of the complaint.

73. Deny the allegations set forth in paragraph “73” of the complaint.

74. Deny the allegations set forth in paragraph “74” of the complaint.

75. In response to the allegations set forth in paragraph “75” of the complaint, defendants repeat and reallege the responses set forth in all the preceding paragraphs of this answer, as if fully set forth herein.

76. Deny the allegations set forth in paragraph “76” of the complaint.

77. The allegations contained in paragraph “77” of the complaint constitute conclusions of law rather than averments of fact, and, accordingly, no response is required.

78. Deny the allegations set forth in paragraph “78” of the complaint.

79. Deny the allegations set forth in paragraph “79” of the complaint and all subparts thereof.

80. The allegations contained in paragraph “80” of the complaint and all subparts thereof constitute conclusions of law rather than averments of fact, and, accordingly, no response is required.

81. Deny the allegations set forth in paragraph “81” of the complaint.

82. Deny the allegations set forth in paragraph “82” of the complaint.

83. Deny the allegations set forth in paragraph “83” of the complaint.

84. Deny the allegations set forth in paragraph “84” of the complaint.

85. Deny the allegations set forth in paragraph “85” of the complaint.

86. Deny the allegations set forth in paragraph “86” of the complaint.

87. Deny the allegations set forth in paragraph “87” of the complaint.

88. Deny the allegations set forth in paragraph “88” of the complaint and all subparts thereof.

89. Deny the allegations set forth in paragraph "89" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

90. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

91. Defendant the City of New York has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any Act of Congress providing for the protection of civil rights.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

92. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and was not the proximate result of any act of the Defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

93. At all times relevant to the acts alleged in the complaint, Defendant City and its agents and officials acted reasonably in the proper and lawful exercise of their discretion. Therefore, defendant City is entitled to governmental immunity from liability.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

94. Punitive damages cannot be recovered from the City of New York.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

95. Plaintiff's claims may be barred in part by the applicable statute of limitations.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

96. Plaintiff has not complied with the conditions precedent to suit.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

97. There was probable cause for plaintiff's arrest and prosecution.

WHEREFORE, defendant the City of New York requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
March 6, 2008

MICHAEL A. CARDOZO
Corporation Counsel of
the City of New York
Attorney for defendant
City of New York
100 Church Street, Room 3-188
New York, New York 10007
(212) 788-1090

By:

A handwritten signature in black ink, appearing to read 'Robyn N. Pullio', written over a horizontal line.

ROBYN N. PULLIO (RP 7777)